

# ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-1027

REBECCA MONTGOMERY,  
APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES and MINOR  
CHILD,  
APPELLEES

Opinion Delivered 28 JANUARY 2009

APPEAL FROM THE JOHNSON  
COUNTY CIRCUIT COURT,  
[NO. JV-06-86]

HONORABLE KEN D. COKER JR.,  
JUDGE

AFFIRMED

## D.P. MARSHALL JR., Judge

The circuit court terminated Rebecca Montgomery's parental rights to her son, J.M., in June 2008. Almost two years earlier, DHS had removed J.M. from Montgomery's custody when he was three days old because he was born with opiates in his system. The court adjudicated J.M. dependent-neglected. Thereafter, Montgomery pleaded no-contest to manslaughter charges stemming from her role in the death of her two-year-old daughter, B.M. In that case, the court sentenced her to twenty-four months' imprisonment and suspended imposition of sentence for an additional forty-two months. Montgomery will soon be released from prison. Here she appeals the termination decision, challenging the sufficiency of the evidence.

Montgomery first argues that the court clearly erred in finding that termination of her parental rights was in J.M.'s best interest. Ark. Code Ann. § 9-27-

341(b)(3)(A)(i)–(ii) (Repl. 2008). Montgomery concedes that there is a high likelihood that J.M. will be adopted. Thus the only issue is whether the circuit court erred in finding that there was a potential for harm to J.M.’s health and safety if he were returned to Montgomery’s custody. Ark. Code Ann. § 9-27-341(b)(3)(A)(ii).

The circuit court found several circumstances that supported its conclusion that returning J.M. to Montgomery’s care was potentially harmful. When J.M. was born, both he and Montgomery had opiates in their systems. Montgomery admitted that she had been taking Methodone and Oxycodone without a prescription and had stolen medication from her parents on multiple occasions. Further, in September 2005, Montgomery’s daughter, B.M., was found dead of a drug overdose in Montgomery’s bed. Three narcotics (Oxycodone, Methadone, and Darvocet) were present in B.M.’s system plus alcohol from adult Nyquil, which someone had administered to B.M. against a doctor’s orders.

At the termination hearing, Montgomery asked the court to place J.M. in her parents’ custody permanently, subject to her visitation and with a hoped-for return to her custody at some point. But it was undisputed that Montgomery and her daughter B.M. were staying with Montgomery’s parents at the time of B.M.’s death. It was also undisputed that Montgomery’s parents’ prescription medicines were part of the original problem: Montgomery was abusing those medicines and they were found in B.M.’s system.

The circuit court found that Montgomery also exhibited a pattern of mental instability. In a fifteen-month period (from June 2004 to September 2005), Montgomery attempted suicide six times. She testified that she almost succeeded three of those times. She had also attempted suicide twice before. Montgomery's counselor further testified that Montgomery and her parents were co-dependent.

The circuit court concluded that the circumstances Montgomery will face when she is released from prison are strikingly similar to those that forced her to move in with her parents in 2005. Though she has applied for more benefits, Montgomery's only certain source of income will be an \$800 monthly disability check. Also, because Montgomery has been incarcerated, she has been unable to secure suitable housing. The circuit court was rightly concerned that these circumstances could force Montgomery back into her parents' home and into the environment that led to B.M.'s death and to J.M.'s removal from Montgomery's custody.

We note another undisputed and important fact: Montgomery has been fully cooperative with DHS. She has sought multiple forms of inpatient and outpatient treatment. She testified that she had been clean for two years, and we commend her progress. But, as the circuit court noted, for most of that time, Montgomery has been in an inpatient treatment facility or in prison. Her progress has not yet been tested in a non-controlled environment. In addition, J.M. has been out of his mother's care for all but three days of his life. As the circuit court pointed out, after Montgomery is

released from prison, it will likely take her months to establish a stable home environment suitable for J.M. and even longer for the Department to reintroduce the child to her.

Taking all these facts into consideration, the circuit court's ruling that returning J.M. to his mother's care was potentially harmful was not clearly erroneous. The goals for J.M. are stability and permanency. Ark. Code Ann. § 9-27-341(a)(3). The circuit court did not clearly err in concluding that returning J.M. to Montgomery would not accomplish those goals, but would create further instability and the potential for harm. Nor did the court clearly err in finding that termination of Montgomery's parental rights was in J.M.'s best interest. *Meriweather v. Arkansas Dep't of Health and Human Services*, 98 Ark. App. 328, 331-32, 255 S.W.3d 505, 507 (2007).

Montgomery's second argument is that the court erred in finding statutory grounds for termination. In addition to the best-interest finding, the circuit court had to find at least one statutory ground before terminating Montgomery's parental rights. Ark. Code Ann. § 9-27-341(b)(3)(B). Here, the court found two. The first ground was that J.M. was adjudicated dependent-neglected, had continued out of his mother's care for more than twelve months, and despite a meaningful effort by DHS to rehabilitate Montgomery and correct the problems, Montgomery had failed to remedy the conditions that caused removal. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a).

The evidence showed that the court adjudicated J.M. dependent-neglected in

July 2006 and that he had been out of Montgomery's custody since June 2006. Montgomery argues, however, that the condition that caused DHS to remove J.M. from her custody was the discovery of opiates in his system at birth and that the condition had since been remedied. This is true but not dispositive. The discovery of opiates in J.M.'s system was just one manifestation of the negative impact of Montgomery's prescription drug abuse.

The definition of a dependent-neglected juvenile is "any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile . . . : (i) Abandonment; (ii) Abuse; . . . (v) Neglect; (vi) Parental unfitness . . . ." Ark. Code Ann. § 9-27-303(18)(A) (Repl. 2008). Again, Montgomery cooperated fully with DHS and participated actively in her case plan. But cooperation in, and even completion of, the DHS case plan does not answer the termination question. *Wright v. Arkansas Dep't of Human Services*, 83 Ark. App. 1, 7, 115 S.W.3d 332, 335 (2003). "What matters is whether [Montgomery's] completion of the case plan achieved the intended result of making her capable of caring for her child." *Ibid.* We see no clear error in the circuit court's conclusion that she has not achieved that goal. *Meriweather*, 98 Ark. App. at 331-32, 255 S.W.3d at 507. Having found no reversible error in the circuit court's decision that DHS proved one statutory ground for termination, we do not address Montgomery's arguments about the second ground.

Affirmed.

KINARD and GLOVER, JJ., agree.